

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

VERNON SIMMONS,

Petitioner,

v.

Case No. 2:08-cv-55  
HON. R. ALLAN EDGAR

JEFFREY WOODS,

Respondent.

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**MEMORANDUM AND ORDER**

Petitioner Vernon Simmons (“Simmons”) filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The habeas petition was referred to Magistrate Judge Timothy P. Greeley for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1(d).

On December 10, 2008, the Magistrate Judge submitted his report and recommendation. [Doc. No. 22]. The Magistrate Judge recommends that the habeas petition be denied and dismissed without prejudice on the ground of failure to fully exhaust state remedies. Petitioner Simmons has not timely filed an objection to the report and recommendation.

After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). For the reasons expressed in the report and recommendation, the petition for writ of habeas corpus brought under 28 U.S.C. § 2254 shall be **DENIED and DISMISSED WITHOUT PREJUDICE**.

If petitioner Simmons files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2) and Fed. R. App. P. 22(b)(1) because the Court finds that he has not made a substantial showing of the denial of a federal constitutional right.

A separate judgment will enter.

SO ORDERED.

Dated: January 23, 2009.

/s/ R. Allan Edgar  
R. ALLAN EDGAR  
UNITED STATES DISTRICT JUDGE

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